IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WILLIAM P. APPS

Group Art Unit: 3727

Examiner: S. Castellano

Serial No.: 09/836,045

Filed: April 16, 2001

For: STACKABLE LOW DEPTH TRAY

Attorney Docket No.: RPC 0544 PUS

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal brief from the final rejection of claims 1-39 of the Office Action dated October 2, 2003. This application was filed on April 16, 2001.

I. REAL PARTY IN INTEREST

The real party in interest is Rehrig Pacific Company, a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 4010 East 26th Street, Los Angeles, California 90023 as set forth in the assignment recorded in the U.S. Patent and Trademark Office on April 16, 2001 at Reel 011724, Frame 0297.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

April 12, 2004	Stephanie M. Mansfield	Stephanie M Mansfield
Date of Deposit	Name of Person Signing	Signature

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to Appellant, Appellant's legal representative, or the assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-39 (see Appendix, attached) are pending in this application. Claims 1-39 have been rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

An amendment after final rejection was not filed.

V. SUMMARY OF THE INVENTION

Bottles, particularly for soft drinks and other beverages, are often stored and transported in trays. As compared with other materials, plastic trays provide advantages such as strength, durability, and reusability. In order to minimize the storage space of trays, reduce their cost and weight, and promote display of the bottles contained therein, many trays are constructed to have shallow side and end walls. Such trays are generally referred to as "low depth" trays in which the side and end walls are lower than the height of the stored bottles, and in which the bottles support the weight of additional trays stacked on top. Unfortunately, bottles can tilt away from vertical alignment and become unstable upon stacking if conventional low depth trays are used to contain the bottles. Conventional trays are typically designed with a tradeoff between side wall strength, weight, and the degree of visibility available for the bottles stored within the tray.

According to the present invention, a low depth tray (10) for bottles (B) is provided which includes a first pair of opposed walls (14, 16), a second pair of opposed walls (18, 20) attached to the first pair of opposed walls (14, 16) to form a wall structure (14, 16,

18, 20), and a base (12) attached to the wall structure (14, 16, 18, 20). At least one interior column (42) projects upwardly within the wall structure (14, 16, 18, 20), where the at least one interior column (42) has a height less than the height of bottles (B) loaded in the tray (10). A plurality of interior divider walls (52) project upwardly from the base (12), each divider wall (52) including two spaced apart, generally parallel surfaces extending between the at least one interior column (42) and the wall structure (14, 16, 18, 20). The divider walls (52), the at least one interior column (42), the base (12), and the wall structure (14, 16, 18, 20) define a plurality of bottle retaining pockets (58), each pocket (58) including at least one divider wall (52) and sized to receive a single bottle (B) therein (*see*, for example, p. 7, line 13 - p. 10, line 17; FIGS. 1, 4, 6-7, and 10).

According to another aspect of the present invention, an interior grid structure (42, 52) is disposed within the wall structure and connected thereto, where the interior grid structure includes a plurality of first and second divider walls (52) extending upwardly from the floor member (12) and a plurality of spaced interior columns (42) projecting upwardly from the divider walls (52), each first divider wall (52) including two spaced apart, generally parallel surfaces extending between first and second interior columns (42) and each second divider wall (52) including two spaced apart, generally parallel surfaces extending between one of the interior columns (42) and the wall structure (14, 16, 18, 20).

In further accordance with the present invention, the wall structure (14, 16, 18, 20) includes a lower wall portion (26) and an upper wall portion (38), the upper wall portion (38) including a plurality of spaced, upwardly extending wall columns (40). A plurality of interior divider walls (52), each including two spaced apart, generally parallel surfaces, interconnect a first one of the wall and interior columns (40, 42) with a second one of the wall and interior columns (40, 42).

Still further, according to the present invention, an interior grid structure (42, 52) is integrally formed with the wall structure (14, 16, 18, 20) and includes a plurality of interior columns (42) projecting upwardly within the wall structure (14, 16, 18, 20) and a plurality of first and second interior divider walls (52) which project upwardly from the base (12) for contacting bottles (B). Each first divider wall (52) defines two spaced apart, generally parallel surfaces extending between first and second interior columns (42), and each second divider wall (52) defines two spaced apart, generally parallel surfaces extending between one of the interior columns (42) and the wall structure (14, 16, 18, 20). The interior grid structure (42, 52), the base (12), and the wall structure (14, 16, 18, 20) together define a plurality of bottle retaining pockets (58) capable of providing four lateral contact points for each bottle (B) received therein.

Therefore, the claimed invention advantageously provides a tray having interior divider walls with a construction that provides sufficient support and stability for the bottles stored therein while also allowing the bottles to be visible for merchandising purposes. The interior divider walls of the present invention have sufficient strength and rigidity to withstand handling and still allow the tray to be lightweight and thus easy to manipulate and carry.

VI. ISSUES

1. Whether claims 1-39 are unpatentable over U.S. Patent No. 5,842,572 issued to Apps et al. ("Apps '572"), U.S. Patent No. 5,651,461 issued to Apps et al. ("Apps '461"), U.S. Patent No. 5,529,176 issued to Apps et al. ("Apps '176"), U.S. Patent No. 5,501,352 issued to Apps ("Apps '352"), U.S. Patent No. 5,487,487 issued to Hammett ("Hammett"), U.S. Patent No. 4,978,002 issued to Apps et al. ("Apps '002"), and U.S. Patent No. 4,899,874 issued to Apps et al. ("Apps '874") under 35 U.S.C. § 102(b).

2. Whether claims 1-39 are unpatentable over U.S. Patent No. 6,073,793 issued to Apps et al. ("Apps '793") under 35 U.S.C. § 102(e).

3. Whether claims 1-39 are unpatentable over Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 in view of U.S. Patent No. 6,047,844 issued to McGrath ("McGrath") and U.S. Patent No. 3,334,767 issued to Cornelius et al. ("Cornelius") under 35 U.S.C. § 103(a).

VII. GROUPING OF CLAIMS

For purposes of this appeal only and based upon the underlying rejections being appealed, Appellant groups the claims as follows:

1. For the 35 U.S.C. § 102(b) rejection over Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, and Apps '874, claims 1-39 do not stand or fall together.

Group A: Claims 1-13 and 37 are directed to a tray having divider walls as defined above extending between the at least one interior column and the wall structure and therefore stand or fall together, but do not stand or fall with Groups B-C.

Group B: Claims 14-24, 36, and 38-39 are directed to a tray having first divider walls as defined above extending between first and second interior columns, and second divider walls as defined above extending between one of the interior columns and the wall structure and therefore stand or fall together, but do not stand of fall with Groups A or C.

Group C: Claims 25-35 are directed to a tray having divider walls as defined above that interconnect a first one of the wall and interior columns with a second one of the wall and interior columns and therefore stand or fall together, but do not stand or fall with Groups A-B.

2. For the 35 U.S.C. § 102(e) rejection over Apps '793, claims 1-39 do not stand or fall together.

Group D: Claims 1-13 and 37 are directed to a tray having divider walls as defined above extending between the at least one interior column and the wall structure and therefore stand or fall together, but do not stand or fall with Groups E-F.

Group E: Claims 14-24, 36, and 38-39 are directed to a tray having first divider walls as defined above extending between first and second interior columns, and second divider walls as defined above extending between one of the interior columns and the wall structure and therefore stand or fall together, but do not stand of fall with Groups D or F.

Group F: Claims 25-35 are directed to a tray having divider walls as defined above that interconnect a first one of the wall and interior columns with a second one of the wall and interior columns and therefore stand or fall together, but do not stand or fall with Groups D-E.

3. For the 35 U.S.C. § 103(a) rejection over Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 in view of McGrath and Cornelius, claims 1-39 do not stand or fall together.

Group G: Claims 1-13 and 37 are directed to a tray having divider walls as defined above extending between the at least one interior column and the wall structure and therefore stand or fall together, but do not stand or fall with Groups H-J.

Group H: Claims 14-24 and 38 are directed to a tray having first divider walls as defined above extending between first and second interior columns, and second divider walls as defined above extending between one of the interior columns and the wall structure and therefore stand or fall together, but do not stand of fall with Groups G or I-J.

Group I: Claims 25-35 are directed to a tray having divider walls as defined above that interconnect a first one of the wall and interior columns with a second one of the wall and interior columns and therefore stand or fall together, but do not stand or fall with Groups G-H or J.

Group J: Claims 36 and 39 are directed to a tray where an interior grid structure of divider walls as defined above and interior columns partially defines a plurality of bottle retaining pockets capable of providing four lateral contact points for each bottle received therein and therefore stand or fall together, but do not stand or fall with Groups G-I.

VIII. ARGUMENT

A. Rejection of Claims 1-39 Under 35 U.S.C. § 102(b)

Appellant respectfully traverses the Examiner's position that the claimed invention is anticipated by Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, and Apps '874 for the reasons stated below.

Appellant claims interior divider walls which includes two spaced apart, generally parallel surfaces extending between the same two columns or between the same column and the wall structure. Specifically, claim 1 (Group A) recites "each divider wall including two spaced apart, generally parallel surfaces extending between the at least one interior column and the wall structure." Claim 14 (Group B) recites "each first divider wall including two spaced apart, generally parallel surfaces extending between first and second interior columns and each second divider wall including two spaced apart, generally parallel surfaces extending between one of the interior columns and the wall structure," with claims 24 and 36 (Group B) reciting similar language. Likewise, claims 25 and 28 (Group C) recite "each divider wall including two spaced apart, generally parallel surfaces which continuously join a first column portion and a second column portion," and "each divider wall including two spaced apart, generally parallel surfaces which interconnect a first one of the wall and interior columns with a second one of the wall and interior columns," respectively.

The Examiner is required to establish a *prima facie* case that every element of the claims are present in one of these seven references. M.P.E.P. § 2131. The Examiner fails

to make this case. For example, the claimed divider walls are not found in any of the references. The Examiner admits the lack of a *prima facie* case during his rejection under 35 U.S.C. § 103(a), stating "[t]he primary references disclose the invention except for the divider wall being a spaced surface construction" (*Final Office Action dated October 2, 2003; Page 3*). The primary references for the § 103 rejection include all the references used in this § 102 rejection.

In his rejection under 35 U.S.C. § 102(b), the Examiner does not address any specific claim language nor apply it to any of the seven references. He merely summarily and broadly argues without reference to the claim language:

> Each of the references discloses a low depth bottle tray having an interior grid structure comprised of at least ten walls (four extending longitudinally and six extending transversely to the container) and three interior columns, a divider wall includes two of the ten walls which are parallel to each other and spaced transversely from each other and are transversely aligned, a divider wall could also include two of the ten walls which are longitudinally aligned with each other (either aligned longitudinally with respect to the container or transversely with respect to the container). A divider wall could also include two of the ten walls which are perpendicular with respect to each other.
>
> (*Final Office Action dated October 2, 2003; Page 2*)

Appellant respectfully submits that the Examiner's broad argument of what "could" constitute a "divider wall" is inappropriate when the claim language is considered. In contrast to Appellant's claimed invention, Apps '572 and Apps '461 both disclose single-walled divider walls 29 extending between the same two columns or between the same column and the wall structure (*see* Apps '572 and Apps '461, FIGS. 1, 3, and the cross-sectional view of FIGS. 7-8). Likewise, Apps '176, Apps '002, and Apps '874 also disclose single-walled divider walls 29 extending between the same two columns or between the same column and

the wall structure (*see* Apps '176, Apps '002, and Apps '874, FIG. 1 and the cross-sectional view of FIG. 2). Still further, Apps '352 discloses single-walled divider walls 46 extending between the same two columns or between the same column and the wall structure (*see* Apps '352, FIGS. 1, 5-6, and the cross-sectional view of FIG. 7), and Hammett discloses single-walled divider walls extending between the same two columns or between the same column and the wall structure (*see* Hammett, FIG. 1 and the cross-sectional view of FIG. 3).

Therefore, none of the Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 references disclose or suggest divider walls which include two spaced apart, generally parallel surfaces extending between at least one interior column and the wall structure (Group A), extending between first and second interior columns and extending between an interior column and the wall structure (Group B), or extending between a first wall or interior column and a second wall or interior column (Group C) as claimed by Appellant. Therefore, independent claim 1 (Group A), claims 14, 24, and 36 (Group B), and claims 25 and 28 (Group C), along with their corresponding dependent claims, are patentably distinguishable over these references.

Because the claims of Group A recite divider walls extending between at least one interior column and the wall structure, which is not recited by the claims of Groups B or C and which is not shown in the prior art, the claims of Group A are patentable independently of the claims of Groups B or C. Furthermore, because the claims of Group B recite first divider walls extending between first and second interior columns and second divider walls extending between one of the interior columns and the wall structure, which is not recited by the claims of Groups A or C and which is not shown in the prior art, the claims of Group B are patentable independently of the claims of Groups A or C. Lastly, because the claims of Group C recite divider walls that interconnect a first one of the wall and interior columns with a second one of the wall and interior columns, which is not recited by the claims of Groups A

or B and which is not shown in the prior art, the Claims of Group C are patentable independently of the claims of Groups A or B.

B. Rejection of Claims 1-39 Under 35 U.S.C. § 102(e)

Appellant respectfully traverses the Examiner's position that the claimed invention is anticipated by Apps '793. As above, Appellant asserts that the Examiner has failed to establish a *prima facie* case (M.P.E.P. § 2131) that every element of the claims are present in Apps '793, as the Examiner merely states that "[a] similar line of reasoning applies in this rejection as is stated in the above rejection (*Final Office Action dated October 2, 2003; Page 2*). The § 103 admission that the divider wall does not have a "spaced surface construction" is also applicable to this reference. (*Id*, p. 3)

Apps '793 only discloses single-walled divider walls extending between the same two columns or between the same column and the wall structure as shown in FIGS. 1 and 8. Apps '793 does not disclose or suggest "each divider wall including two spaced apart, generally parallel surfaces extending between the at least one interior column and the wall structure" as recited in claim 1 (Group D), or "each first divider wall including two spaced apart, generally parallel surfaces extending between first and second interior columns and each second divider wall including two spaced apart, generally parallel surfaces extending between one of the interior columns and the wall structure" as recited in claim 14 (Group E) or as similarly recited in claims 24 and 36 (Group E). Apps '793 also does not disclose or suggest "each divider wall including two spaced apart, generally parallel surfaces which continuously join a first column portion and a second column portion" as recited in claim 25 (Group F) or "each divider wall including two spaced apart, generally parallel surfaces which interconnect a first one of the wall and interior columns with a second one of the wall and interior columns" as recited in claim 28 (Group F).

The Apps '793 reference does not disclose or suggest divider walls which include two spaced apart, generally parallel surfaces extending between extending between at least one interior column and the wall structure (Group D), extending between first and second interior columns and extending between an interior column and the wall structure (Group E), or extending between a first wall or interior column and a second wall or interior column (Group F) as claimed by Appellant. Therefore, independent claim 1 (Group D), claims 14, 24, and 36 (Group E), and claims 25 and 28 (Group F), along with their corresponding dependent claims, are patentably distinguishable over this reference.

Because the claims of Group D recite divider walls extending between at least one interior column and the wall structure, which is not recited by the claims of Groups E or F and which is not shown in the prior art, the claims of Group D are patentable independently of the claims of Groups E or F. Furthermore, because the claims of Group E recite first divider walls extending between first and second interior columns and second divider walls extending between one of the interior columns and the wall structure, which is not recited by the claims of Groups D or F and which is not shown in the prior art, the claims of Group E are patentable independently of the claims of Groups D or F. Lastly, because the claims of Group F recite divider walls that interconnect a first one of the wall and interior columns with a second one of the wall and interior columns, which is not recited by the claims of Groups D or E and which is not shown in the prior art, the claims of Group F are patentable independently of the claims of Groups D or E.

C. Rejection of Claims 1-39 Under 35 U.S.C. § 103(a)

Appellant respectfully traverses the Examiner's position that it would be obvious to combine the teachings of Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002 or Apps '874 with McGrath or Cornelius in order to provide the claimed invention. Even if such a combination could be made, the claimed invention is not provided.

First, the Examiner fails to establish a *prima facie* case of obviousness (M.P.E.P. §§ 2142-2143). The Examiner adds two secondary references to the eight primary references cited in the § 102 rejections in an attempt to argue that Appellant's claimed invention is obvious over the combination. M.P.E.P. § 2143 states:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The Examiner admits that none of the eight primary references disclose divider walls of spaced surface construction as claimed by Appellant, stating that "[t]he primary references disclose the invention except for the divider wall being a spaced surface construction" (*Final Office Action dated October 2, 2003; Page 3*). Further, the "combined" references do not teach the claimed invention, and the Examiner provides no suggestion or motivation for the combination. The Examiner merely argues that McGrath and Cornelius teach divider walls as claimed by Appellant, and that it would have been "obvious" to modify the primary references to have divider walls with spaced construction. This does not provide the proper proof of motivation. M.P.E.P. § 2143.01.

Furthermore, the cited references teach away from Appellant's invention, and none of the cited references recognize the problem solved by Appellant's claimed invention.

1. There Is No Motivation Or Suggestion To Combine The Cited References

Appellant claims a bottle tray with a plurality of bottle retaining pockets which each receive a single bottle, where the bottle retaining pockets are formed in part by interior divider walls having two spaced apart, generally parallel surfaces which extend between an interior column and the wall structure (Groups G and J), between first and second interior columns and between one of the interior columns and the wall structure (Group H), or between a first one of the wall and interior columns and a second one of the wall and interior columns (Group I). Groups G, H, and I are each patentable over the primary references for the reasons stated above, where each of the primary references is directed to a bottle case with pockets for supporting individual bottles, the bottle pockets including divider walls of single-walled construction. The Examiner attempts to overcome this important difference between the primary references and Appellant's claimed invention by reliance on the McGrath and Cornelius references, both of which are directed to bottle cases without individual bottle pockets or any interior column structure.

Appellant has defined "divider walls" to be interior walls which form part of a retaining pocket sized to hold a single bottle. Specifically, independent claims 1, 14, 24-25, and 28 (Groups G-I) require that "the divider walls, the at least one interior column, the base, and the wall structure define a plurality of bottle retaining pockets, each pocket including at least one divider wall and sized to receive a single bottle therein." Claim 36 (Group J) recites "wherein the interior grid structure, the base, and the wall structure together define a plurality of bottle retaining pockets capable of providing four lateral contact points for each bottle received therein."

The Examiner asserts that "[i]f the pocket receives more than one bottle, the pocket is still sized to receive a single bottle" (*Final Office Action dated October 2, 2003; Page 4*). Appellant respectfully disagrees. Appellant is not reciting that the bottle retaining

pocket is sized to receive *a* bottle, but rather is reciting that the bottle retaining pocket is sized to receive *a single* bottle. Appellant asserts that the recitation of "a single bottle" in claims 1, 14, 24-25, and 28 (Groups G-I) and the recitation of the "bottle retaining pockets capable of providing four lateral contact points for each bottle received therein" in claim 36 (Group J) are each sufficiently clear to one skilled in the art in view of the specification and drawings to reflect that only one bottle, rather than a plurality of bottles, is received in each bottle retaining pocket.

In contrast to Appellant's claimed invention, McGrath discloses bottle support surfaces 46 which form a single partition 47 that faces side walls 27 and extends longitudinally within the crate (*see* McGrath, col. 8, lines 38-54; FIG. 24). McGrath does not disclose or suggest the use of more than one partition, nor does McGrath disclose or suggest an interior column structure. As shown in FIG. 24 of McGrath, several bottles may be placed on either side of partition 47, such that partition 47 does not form part of a retaining pocket sized to receive a single bottle (Groups G-I) or provide four lateral contact points for each bottle (Group J) as claimed by Appellant. Therefore, there is no motivation or suggestion to combine McGrath's partitions 47 with the bottle pockets of any of the Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 references to achieve Appellant's invention.

Also in contrast to Appellant's claimed invention, Cornelius discloses dividers 15 which create four equal compartments for holding 6-packs of bottles, again without any interior column structure (*see* Cornelius, Abstract; FIG. 1). Cornelius states that "[w]ithin the receptacle area defined by the side and end walls 7 and 8, four generally rectangular cells or 6-pack receiving pockets 10 are provided by a central longitudinal reinforcing and divider rib 11 and a central transverse divider rib 12" (*see* Cornelius, col. 2, lines 42-46). Cornelius further discloses how each supporting rib 22 "advantageously centrally underlies a row of the 6-pack bottles" (*see* Cornelius, col. 3, lines 54-58), and how loading paperboard carton 6-

packs into the cells 10 is facilitated by dividers 11 and 12 (*see* Cornelius, col. 5, lines 39-64). Therefore, Cornelius discloses dividers which separate packs of multiple bottles contained within a support structure (i.e., the 6-pack carton), and does not disclose or suggest the dividers forming retaining pockets for supporting a single bottle (Groups G-I) or providing four lateral contact points for each bottle (Group J) as claimed by Appellant. Therefore, there is no motivation or suggestion to combine Cornelius and Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 to achieve Appellant's claimed invention.

2. The Cited References Teach Away From The Claimed Invention

As detailed above, Appellant claims a plurality of interior divider walls including two generally parallel, spaced apart surfaces, where at least one divider wall is included in each bottle retaining pocket to aid in support the single bottle received therein. McGrath teaches away from Appellant's claimed invention, disclosing that several bottles are placed on each side of partition 47 (*see* McGrath, FIG. 4), and fails to disclose or suggest the use of more than one partition. Also teaching away from Appellant's claimed invention, Cornelius discloses dividers 15 that create compartments to hold paperboard carton 6-packs of bottles (*see* Cornelius, Abstract; FIG. 1), such that Cornelius' dividers only function to separate packs of bottles contained within an external support structure (i.e., the carton). As such, Cornelius teaches away from divider walls forming bottle retaining pockets for supporting a single bottle (Groups G-I) or providing four lateral contact points for each bottle (Group J) as claimed by Appellant.

3. The Cited References Fail To Recognize The Problem Or Solution Achieved By The Claimed Invention

Appellant's claimed divider wall construction advantageously provides bottle stability while maintaining bottle visibility and a lightweight tray. Neither the primary references nor McGrath or Cornelius recognize the problem solved by Appellant's claimed

invention, namely that the plurality of interior divider walls as described herein provides a lighter tray having greater strength and stiffness, as well as greater support for the individual bottle in contact with each divider wall.

The primary references each disclose only single-walled divider walls, and do not recognize the noted advantages provided by Appellant's divider wall construction of two generally parallel, spaced apart surfaces. In the construction shown in each of the several primary references, the divider walls were merely used as spacers, where the structural load of the tray was handled by the columns and the side walls. Appellant recognized that the overall strength of the tray as well as the stability of the bottles carried therein could be increased by utilizing divider walls having two spaced apart, generally parallel surfaces, and that this improvement could be implemented while still maintaining a lightweight tray. As for McGrath and Cornelius, each reference fails to disclose divider walls which cooperate with any type of interior column nor form part of a bottle retaining pocket for receiving and providing support to a single bottle. These references clearly do not appreciate the bottle stability provided by Appellant's claimed invention wherein a divider wall with the construction described herein is included in each bottle retaining pocket to provide greater support to the single bottle it receives.

For all of the foregoing reasons, independent claims 1 (Group G), 14 and 24 (Group H), 25 and 28 (Group I), and 36 (Group J) are each patentably distinguishable over the combination of Apps '793, Apps '572, Apps '461, Apps '176, Apps '352, Hammett, Apps '002, or Apps '874 with either the McGrath or Cornelius references.

Because the claims of Group G recite divider walls extending between at least one interior column and the wall structure, which is not recited by the claims of Groups H-J and which is not shown in the prior art, the claims of Group G are patentable independently of the claims of Groups H-J. In addition, because the claims of Group H recite first divider

walls extending between first and second interior columns, and second divider walls extending between one of the interior columns and the wall structure, which is not recited by the claims of Groups G or I-J and which is not shown in the prior art, the claims of Group H are patentable independently of Groups G or I-J. Furthermore, because the claims of Group I recite divider walls that interconnect a first one of the wall and interior columns with a second one of the wall and interior columns, which is not recited by the claims of Groups G-H or J and which is not shown in the prior art, the claims of Group I are patentable independently of the claims of Groups G-H and J. Lastly, because the claims of Group J recite an interior grid structure of divider walls and interior columns which partially define a plurality of bottle retaining pockets capable of providing four lateral contact points for each bottle received therein, which is not recited by the claims of Groups G-I and which is not shown in the prior art, the claims of Group J are patentable independently of the claims of Groups G-I.

IX. SUMMARY

The Examiner's understanding and characterization of the references are submitted to be incorrect. The rejection of claims 1-39 under 35 U.S.C. § 102(b), under 35 U.S.C. § 102(e), and under 35 U.S.C. § 103(a) are in error. For the reasons discussed above, it is thus respectfully requested that these rejections be reversed.

The fee of **$330.00** as applicable under the provisions of 37 C.F.R. § 1.17(c) is enclosed. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

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Enclosure - Appendix

X. APPENDIX - CLAIMS ON APPEAL

1. A low depth tray for bottles, comprising:

a first pair of opposed walls;

a second pair of opposed walls attached to the first pair of opposed walls to form a wall structure;

a base attached to the wall structure;

at least one interior column projecting upwardly within the wall structure, the at least one interior column having a height less than the height of bottles loaded in the tray; and

a plurality of interior divider walls which project upwardly from the base, each divider wall including two spaced apart, generally parallel surfaces extending between the at least one interior column and the wall structure,

wherein the divider walls, the at least one interior column, the base, and the wall structure define a plurality of bottle retaining pockets, each pocket including at least one divider wall and sized to receive a single bottle therein.

2. The tray according to claim 1, wherein the wall structure includes an upper wall portion having a plurality of upwardly projecting wall columns.

3. The tray according to claim 2, wherein the wall columns and the at least one interior column are substantially equal in height.

4. The tray according to claim 2, wherein the wall columns and the at least one interior column are substantially hollow.

5. The tray according to claim 2, wherein each wall column includes at least one curved surface contoured to the shape of bottles loaded in the tray, and wherein the at least

one interior column is substantially octagonal and includes curved surfaces disposed on alternating sides thereof which are contoured to the shape of bottles loaded in the tray.

6. The tray according to claim 5, wherein the wall columns and the at least one interior column include an opening adjacent the base on the curved surfaces thereof.

7. The tray according to claim 1, wherein the wall structure has a double-walled construction and includes a lower wall portion having a substantially flat outer wall and a generally curved inner wall.

8. The tray according to claim 7, wherein the lower wall portion includes a plurality of windows formed therein.

9. The tray according to claim 1, wherein the divider walls each include at least one curved surface contoured to the shape of bottles loaded in the tray.

10. The tray according to claim 1, wherein each of the second pair of opposed walls includes a handle, each handle including a cutout portion formed adjacent to the base, and a slot formed above the cutout portion, such that a user's fingers can be inserted into the cutout portion and through the slot in a palm-up orientation, and into the slot and through the cutout portion in palm-down orientation.

11. The tray according to claim 1, wherein the base includes an upper surface including a plurality of spaced bottle support areas, wherein each bottle support area forms part of one bottle retaining pocket and includes a generally circular central portion.

12. The tray according to claim 11, wherein each bottle support area further includes a concave perimeter portion which at least partially surrounds the central portion and is attached to the at least one divider wall of the bottle retaining pocket.

13. The tray according to claim 1, wherein the base includes a lower surface having generally circular receiving areas having central retaining openings sized to receive bottle closures therein, wherein the receiving areas are operable to guide the bottle closures into the corresponding retaining openings.

14. A low depth tray for storing and transporting bottles, comprising:

a floor member;

a unitary wall structure extending upwardly from the floor member, the wall structure having a plurality of windows and a plurality of upwardly projecting wall columns disposed between the windows; and

an interior grid structure disposed within the wall structure and connected thereto, the interior grid structure including a plurality of first and second divider walls extending upwardly from the floor member and a plurality of spaced interior columns projecting upwardly from the divider walls, each first divider wall including two spaced apart, generally parallel surfaces extending between first and second interior columns and each second divider wall including two spaced apart, generally parallel surfaces extending between one of the interior columns and the wall structure, the interior columns having a height less than the height of bottles loaded in the tray,

wherein the interior grid structure, the wall structure, and the floor member together define a plurality of bottle retaining pockets each sized to receive a single bottle therein, and the wall columns and the interior columns each include at least one curved surface adapted to contact bottles received in the bottle retaining pockets.

15. The tray according to claim 14, wherein the wall structure has a double-walled construction, the wall structure including a lower wall portion having a substantially flat outer wall and a generally curved inner wall adjacent the window which is adapted to contact bottles received in the bottle retaining pockets.

16. The tray according to claim 14, wherein the first and second divider walls each include at least one curved surface adapted to contact bottles received in the bottle retaining pockets.

17. The tray according to claim 14, wherein the columns are substantially hollow.

18. The tray according to claim 14, wherein the interior columns and the wall columns extend above the floor member a distance of approximately one third of the height of bottles loaded in the tray.

19. The tray according to claim 14, wherein the wall columns and interior columns disposed along a transverse axis of the tray each include a recess formed therein which extends along the transverse axis of the tray.

20. The tray according to claim 14, wherein the wall structure includes two handles on opposite ends thereof, each handle including a cutout portion formed in the wall structure adjacent the floor member, and a slot formed in the wall structure above the cutout portion, such that a user's fingers can be inserted into the cutout portion and through the slot in a palm-up orientation, and into the slot and through the cutout portion in palm-down orientation.

21. The tray according to claim 14, wherein the floor member includes an upper surface including a plurality of spaced bottle support areas, wherein each bottle support area includes a generally circular central portion and a concave perimeter portion which at least partially surrounds the central portion and is attached to at least one divider wall.

22. The tray according to claim 14, wherein the floor member includes a lower surface having receiving areas including central retaining openings sized to receive bottle closures therein.

23. The tray according to claim 14, wherein the bottle retaining pockets are sized to receive two-liter bottles.

24. A plastic low depth tray for bottles, comprising:

a base having an upper surface and a lower surface, the upper surface including a plurality of spaced bottle support areas having a central portion at least partially surrounded by a curved perimeter portion;

a pair of opposed end walls extending upwardly from the base, each end wall including a handle formed therein;

a pair of opposed side walls extending upwardly from the base and integrally joined with the pair of opposed end walls, wherein the side and end walls are of double-walled construction and include a lower wall portion and an upper wall portion, the lower wall portion having a substantially flat outer wall, a generally curved inner wall, and a plurality of windows formed therein, and the upper wall portion having a plurality of spaced wall columns projecting upwardly from the lower wall portion between the windows; and

an interior grid structure integrally formed with the end walls and the side walls, the interior grid structure including a plurality of spaced upwardly projecting interior columns disposed along a longitudinal axis of the tray and having a height less than the height of bottles loaded in the tray, and a plurality of first and second divider walls extending upwardly from

the base, each first divider wall including two spaced apart, generally parallel surfaces interconnecting first and second interior columns and each second divider wall including two spaced apart, generally parallel surfaces interconnecting one of the wall columns and one of the interior columns,

wherein the interior grid structure, side walls, end walls, and base together define a plurality of bottle retaining pockets each sized to receive a single bottle therein, each pocket including a bottle support area for supporting a base of each bottle and at least one column and at least one divider wall for providing lateral support for each bottle.

25. A stackable low depth tray for storing and transporting bottles, comprising:

a base having an upper surface and a lower surface, the lower surface including a plurality of receiving areas;

a wall structure extending upwardly from the base, the wall structure including a lower wall portion having a lower surface and an upper surface, and an upper wall portion including a plurality of spaced, upwardly extending hollow wall columns;

a plurality of spaced, upwardly extending hollow interior columns disposed within the wall structure, the interior columns having a height less than the height of bottles loaded in the tray; and

a plurality of interior divider walls, each divider wall including two spaced apart, generally parallel surfaces which continuously join a first column portion and a second column portion to form, in combination with the base and the wall structure, a plurality of bottle retaining pockets each sized to receive a single bottle therein,

wherein when the tray is empty and is disposed in a stacked configuration with a like lower tray, the columns of the tray are adapted to receive at least a portion of the columns of the like lower tray and the lower surface of the lower wall portion of the tray is adapted to be supported on the upper surface of the lower wall portion of the like lower tray, and when the tray is loaded with bottles and is disposed in a stacked configuration with a like lower tray, the bottle retaining pockets of the tray are substantially aligned with the bottle

retaining pockets of the like lower tray, and the receiving areas of the tray are adapted to receive the closures of bottles loaded in the like lower tray.

26. The tray according to claim 25, wherein the wall structure has a double-walled construction, and the lower wall portion includes a plurality of windows formed therein between the wall columns.

27. The tray according to claim 25, wherein each of the wall columns and interior columns includes at least one curved surface contoured to the shape of bottles loaded in the tray.

28. A stackable low depth tray for storing and transporting bottles, comprising:

a base having an upper surface and a lower surface, the upper surface including a plurality of bottle support areas and the lower surface including a plurality of receiving areas substantially aligned with the bottle support areas;

a wall structure attached to the base, the wall structure including a lower wall portion having a lower surface and an upper surface, and an upper wall portion including a plurality of spaced, upwardly extending wall columns;

a plurality of spaced interior columns generally disposed within the wall structure and extending upwardly to a height less than the height of bottles loaded in the tray, wherein the wall columns and interior columns disposed along a transverse axis of the tray each include a recess formed therein which extends along the transverse axis of the tray; and

a plurality of interior divider walls, each divider wall including two spaced apart, generally parallel surfaces which interconnect a first one of the wall and interior columns with a second one of the wall and interior columns to form, in combination with the bottle support areas and the wall structure, a plurality of bottle retaining pockets within the tray each sized to receive a single bottle therein and having substantially equal center-to-center distances,

wherein when the tray is empty and is disposed in a cross-stacked configuration with an upper like tray, the column recesses are adapted to receive a portion of the wall structure of the upper like tray, and when the tray is loaded with bottles and is disposed in a cross-stacked configuration with an upper like tray, the bottle retaining pockets of the tray are aligned with the receiving areas of the upper like tray.

29. The tray according to claim 28, wherein the outer wall structure has a double-walled construction, and the lower wall portion includes a plurality of windows formed therein between the wall columns.

30. The tray according to claim 28, wherein each column includes at least one curved surface contoured to the shape of bottles loaded in the tray.

31. The tray according to claim 28, wherein the columns are substantially hollow for receiving at least a portion of the columns of a subjacent like tray.

32. The tray according to claim 28, wherein the column recesses extend downwardly to the height of the upper surface of the lower wall portion, and the upper surface of the wall structure of the tray is adapted to support the lower surface of the wall structure of the upper like tray.

33. The tray according to claim 28, wherein each bottle support area includes a generally circular central portion and a concave perimeter portion which at least partially surrounds the central portion and is attached to at least one divider wall.

34. The tray according to claim 28, wherein the bottle support areas include apertures formed therein.

35. The tray according to claim 28, wherein the center-to-center distances between the bottle retaining pockets of the tray and the bottle retaining pockets of an adjacent like tray abutting the wall structure are substantially equal.

36. A low depth tray for bottles, comprising:

a base;

a wall structure extending upwardly from the base; and

an interior grid structure integrally formed with the wall structure, the interior grid structure including a plurality of interior columns projecting upwardly within the wall structure and a plurality of first and second interior divider walls which project upwardly from the base for contacting bottles, the interior columns having a height less than bottles loaded in the tray, each first divider wall defining two spaced apart, generally parallel surfaces extending between first and second interior columns, and each second divider wall defining two spaced apart, generally parallel surfaces extending between one of the interior columns and the wall structure,

wherein the interior grid structure, the base, and the wall structure together define a plurality of bottle retaining pockets capable of providing four lateral contact points for each bottle received therein.

37. The tray according to claim 1, wherein the divider walls each include an upper surface connecting the two generally parallel surfaces.

38. The tray according to claim 14, wherein the first and second divider walls each include an upper surface connecting the two generally parallel surfaces.

39. The tray according to claim 36, wherein the first and second divider walls each include an upper surface connecting the two generally parallel surfaces.